

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17519 of 2003

With

CIVIL APPLICATION No. 6606 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DECEASED ALIFBHAI HAJI MUSABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17519 of 2003
MR AJ PATEL for Petitioner No. 1-6
MR. NAGESH SOOD, LD. AGP for Respondent No. 1-2
RULE SERVED for Respondent No. 1-2
-

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 24/08/2004

ORAL JUDGEMENT

1. The petitioners at the relevant time were the

owners of land bearing survey no. 24, admeasuring 8296 sq. mts. situated at Village Tandalja, taluka and district Vadodara. By way of this Special Civil Application under Article 226/227 of the Constitution of India petitioners have challenged the legality and validity of the impugned order 3-10-2003 passed by Deputy Collector, Vadodara, in confiscating the aforesaid land in question to the State Government by exercising powers under section 65 of the Bombay Tenancy And Agricultural Lands Act. (Bombay Tenancy Act).

2. The Deputy collector Vadodara was of the opinion that the land in question was kept uncultivated / Padthar for consecutively for three years, i.e. for the years 1999-2000 to 2001-2002 and therefore, proceedings were initiated under section 65 of the Bombay Tenancy Act. A show cause notice came to be issued and the petitioners gave reply to the show cause notice. The petitioners justified non cultivation and keeping the land in question as padthar land by pointing out the fact that the land is included in the limits of Vadodara Municipal Corporation since 1985 and it is in the residential zone. Town Planning Scheme is also implemented and therefore, it was not possible to cultivate the land in question. It was also pointed out that in fact an application for Non Agricultural Use was already submitted before the Collector and therefore, petitioners requested to withdraw the show cause notice. In spite of the aforesaid fact situation Deputy Collector, Vadodara solely on the ground that the land in question was kept uncultivated / padthar for more than 3 years consecutively, passed an order of confiscating the land in question to the State Government by holding that there is breach of section 65 of Bombay Tenancy Act.

3. Shri. Jayesh Patel, learned advocate appearing on behalf of the petitioners submitted that while passing the impugned order dated 3-10-2003 Deputy Collector has not considered the reason for not cultivating the land in question and straightway only on the basis that the land was kept uncultivated for more than 3 years, said impugned order has been passed. He has further submitted that the Deputy Collector has not considered the circumstances beyond the control of the petitioners for not cultivating the land in question. He has further submitted that even under section 65 of the Bombay Tenancy Act the Deputy Collector / Collector has to form an opinion whether non cultivation of the land was beyond the control of the petitioners or not and then & then only the order under section 65 of the Act confiscating the land can be passed. He has further submitted that

even under section 65 of the Bombay Tenancy Act the Deputy Collector could have passed an order forfeiting / confiscating the land in question for a maximum period of ten years in the aggregate. In support of his contention learned advocate has relied upon the judgment of this Court reported in the case of VORA MUNIRABEN GULAMBHAI Vs. STATE OF GUJARAT, reported in 2004 (2) G.L.H. pg. 573.

4. Mr. Nagesh Sood, learned AGP appearing on behalf of the respondents has tried to support the order passed by Deputy Collector, Vadodara. He has submitted that in view of the fact that the land in question was kept uncultivated / padthar for more than 3 years, Deputy Collector is justified in passing order confiscating and taking management of the land in question and has requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. Section 65 of the Bombay Tenancy Act reads as under:-

" 65. (1) If it appears to the (State) Government that for any two consecutive years, any land has remained uncultivated (or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control) the (State) Government may, after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

3(1A) The assumption of management of land under subsection (1) on the ground that the full and efficient use of the land has not been made for the purpose of agriculture shall be for such period as the State Government may, from time to time, fix so, however, that such period shall not exceed ten years in the aggregate).

(2) On the assumption of the management, such land shall vest in the (State) Government during the continuance of the management and the provisions of Chapter IV shall mutatis mutandis apply to the said land:

4 (Provided that the manager may in suitable cases give such land on lease as rent

even equal to the amount of its assessment:

Provided further that if the management of the land has been assumed under subsection (1) on account of the default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III, as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed. "

Considering the aforesaid provisions, it is clear that if it is found by the State Government that for any two consecutive years any land has remained uncultivated, Government may after making such inquiry as it thinks fit declare that the management of such land shall be assumed and that the assumption of management of land shall not exceed 10 years in the aggregate. Thus, under Section 65 of the Act, the State Government has no power or jurisdiction to confiscate the land in question permanently and now considering the order passed by the Deputy Collector dated 3-10-2003, the Deputy Collector has passed an order of confiscation of the land in question permanently and, therefore, the order passed by the Deputy Collector in confiscating the land in question is ex facie illegal and against the provisions of Section 65 of the Act. This Court, in Special Civil Application No. 448 of 1982, has taken the similar view and has held that under Section 65 of the Act, there is no power of confiscation and the maximum power that can be had is the power to take the management and no notice was given with regard to the management and therefore, the order cannot be allowed to stand. In the present case also, even if we look to the notice dated 27-5-2003 by which the petitioner was called upon to show cause, there is no reference to taking over management of the land in question and the notice as given with regard to confiscation of the land in question and the said notice was given under Section 65 of the Act. Therefore, even the show cause itself was beyond the scope of Section 65 of the Act and therefore, as held by this Court, the order passed by the Deputy Collector, Vadodara dated 3-10-2003 in confiscating the land in question, requires to be quashed and set aside.

6. There is another aspect of the matter that while considering provisions of Section 65 of the Bombay Tenancy Act the Collector and or the appropriate authority was required to form an opinion whether non cultivation of the land in question was due to the reasons beyond the control of the owner or not and then &

then only the order of confiscating and or taking management of the land in question can be passed. In the present case from bare reading of the order passed by Deputy Collector, Vadodara dated 3-10-2003 it is clear that he has mechanically passed the order of confiscation of the land considering the fact that the land in question is kept uncultivated/ padthar for more than 3 years, without forming an opinion whether the land in question was kept uncultivated for the reasons beyond the control of the petitioners or not. Under the circumstances, on both the grounds the order passed by Deputy Collector, Vadodara dated 3-10-2003 is required to be quashed and set aside. Accordingly, present Special Civil Application is allowed. Impugned order dated 3-10-2003 passed by Deputy Collector, Vadodara in confiscating the land in question to the State Government is hereby quashed and set aside. Rule is made absolute. No order as to costs.

7. In view of the order passed in main Special Civil Application, no order in civil application.

Dt: 24-8-2004

(M.R. SHAH, J)

/vgn